

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	NSD File No. L-98-52
	)	NSD File No. L-98-54
	)	

PARTIAL OPPOSITION TO PETITIONS FOR WAIVERS

MCI Telecommunications Corporation ("MCI"), by its attorneys, respectfully submits this opposition to the petitions filed by Sprint Local Telephone Companies ("Sprint") and Electric Lightwave, Inc. ("ELI") requesting that the implementation schedule for long-term number portability ("LNP") be significantly delayed.<sup>1</sup> Specifically, MCI urges the Common Carrier Bureau ("Bureau") to deny ELI's waiver requests in their entirety, and deny Sprint's request with respect to its Athens exchange in the Dallas Metropolitan Statistical Area ("MSA").

INTRODUCTION AND SUMMARY

The Bureau must not routinely grant waivers of the LNP implementation schedule without carefully scrutinizing those requests and ensuring that granting extensions actually serves the public interest. Over the last six weeks, parties have flooded the Commission with petitions requesting waivers of their obligations to deploy LNP. While several of these were legitimately based on the failure of Perot Systems to serve as the Number Portability Administration Center ("NPAC") in the Southeast, Western and West Coast regions, many others were based on alleged technical problems, poor network planning, or mere convenience to the petitioner. Increasingly, these waiver requests provide less and less detail regarding the reasons for the requested delay. MCI is concerned with this waiver-filing trend, and perhaps more significantly, that the casual

<sup>1</sup> Sprint Local Telephone Companies, *Petition for Waiver*, CC Docket 95-116, NSD File No L-98-54, March 16, 1998 ("Sprint Petition"); ELI, *Petition for Waiver*, CC Docket 95-116, NSD File No L-98-52, April 7, 1998 ("ELI Petition").

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approach the Bureau took in granting waivers of the Phase I deadline has lead to the impression that the Commission will simply "rubber-stamp" LNP waiver requests.

In addressing the current petitions, the Bureau must stem this flood of waiver requests. It should reiterate its commitment to expeditious LNP deployment, while emphasizing that waiver requests must be based on "extraordinary circumstance beyond the control of the petitioner" and supported by "substantial, credible evidence." The Bureau should deny ELI's petition in its entirety. It plainly lacks sufficient information to judge its merits, and utterly fails to meet the legal requirements for a waiver of the LNP implementation deadline. Similarly, the Bureau should, in part, deny Sprint's petition as it pertains to Sprint's Athens switch.

### DISCUSSION

#### A. ELI Petition

ELI petitions the Bureau for three forms of relief. First, it requests a waiver of Section 52.3(e) of the Commission's Rules that requires that a petition for waiver be filed at least 60 days in advance of the filing deadline for which the waiver is requested ("60-Day Advance Filing Requirement").<sup>2</sup> ELI, which filed its petition of the May 15 implementation deadline on April 6, 1998, has failed to meet this requirement by twenty-one days. It offers as the basis for granting this request "confusion" and its failure to coordinate with other affected parties.<sup>3</sup> Second, ELI requests a waiver of its obligation for two switches to meet the Phase II implementation schedule that would lead to a nearly three-month implementation delay.<sup>4</sup> It does not support this request, other than by referring to the Perot System failure,<sup>5</sup> nor does it justify the requested time extensions. Third, it requests that for "all affected carriers," the Bureau delay Phase III implementation for nearly two months, and advance the Phase IV implementation date by nearly one month.<sup>6</sup> It provides no explanation of why these dates should be shifted.

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<sup>2</sup> ELI Petition at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 6.

The Bureau must deny ELI's petition for waiver of the *60-Day Advance Filing Requirement*. It is settled that a waiver is appropriate only if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>7</sup> A grant of a waiver "must be based on articulated, reasonable standards that are predictable, workable, and not susceptible to discriminatory application."<sup>8</sup> Furthermore, the Commission has recently emphasized that petitioners generally face a "high hurdle" to show that a waiver is justified."<sup>9</sup> ELI has not demonstrated that special circumstances exist for grant of a waiver, particularly in light of the fact that they missed the sixty-day window by twenty-one days.

Confusion and a failure to coordinate cannot become the standards for granting a waiver. ELI's primary basis for the waiver is "confusion" and its own inability to coordinate with other industry members. Such a basis cannot be considered "special circumstances," and certainly is not a standard that is either predictable, or not susceptible to discriminatory application. Additionally, granting a waiver based on these grounds will further open the door to meritless waiver requests from parties that only intend to delay number portability.

The 60-day advanced filing window provides industry certainty, avoids 11<sup>th</sup> hour waiver requests, and should not be easily waived. The 60-day advanced window enables carriers to reasonably rely on the assumption that other carriers are achieving their LNP obligations, and helps to ensure that LNP implementation is properly coordinated. It also ensures that the Bureau has adequate time to review a request and receive industry input. Waiving this requirement indiscriminately would lead to additional uncertainties that the industry can ill-afford in implementing LNP, and potentially lead to coordination problems or negative economic consequences to carriers who are proceeding to meet the deadlines, only to learn at the last minute that other carriers have delayed implementation.

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<sup>7</sup> *Id. citing Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular"); *WAIT Radio*, 418 F.2d at 1157.

<sup>8</sup> *Id. citing WAIT Radio*, 418 F.2d at 1153.

<sup>9</sup> *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, Order, CC Docket No. 96-98, DA 97-675, rel. Apr. 4, 1997, at ¶ 14, *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("WAIT Radio").

Even if the Bureau grants ELI's waiver request of the *60-day Advanced Filing Window*, it should deny its requested waiver of the Phase II implementation deadline. The Commission requires that a LNP waiver request must be based on "extraordinary circumstance beyond the control of the petitioner" and supported by "substantial, credible evidence."<sup>10</sup> While the failure of Perot Systems -- the basis for ELI's request -- was beyond the control of the ELI, unsupported by other evidence this event cannot perpetually serve as a justification for relief from implementing number portability. Having now known about the failure for several months, ELI should take steps to adjust to the situation, much like it would adjust to other business changes and events. While MCI recognizes that Perot Systems' failure will impact implementation schedules, the delays requested to account for the failure are excessive. Based on existing Commission implementation schedules, carrier networks should be ready immediately to begin intercompany testing once NPAC turn-up testing is complete. ELI does not demonstrate that it took any reasonable steps to adjust to this failure to deploy LNP implementation as promptly as possible.

Furthermore, ELI has failed to demonstrate that the schedule it proposes is the most expeditious one for implementing LNP. In fact, it provides no explanation for its proposed schedule and extension to the implementation deadline. It only states that it be permitted to implement LNP by August 1, 1998, and proposes that intercompany testing be completed by July 1, 1998.<sup>11</sup> As demonstrated by MCI's previous comments on other parties' waiver requests, the proposed intervals are excessive.<sup>12</sup> Intercompany testing should take approximately seventeen days,<sup>13</sup> so it is unclear why ELI requires until July 1, 1998, which is over fifty days after the NPAC will be ready for testing to begin, to complete testing. Additionally, ELI proposes that

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<sup>10</sup> *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286, rel. June 27, 1996 at ¶85("First Report and Order").

<sup>11</sup> ELI Petition at 5.

<sup>12</sup> See, Comments of MCI Telecommunications Corporation in Opposition to Petitions for Extension of Time of US West, Pacific Bell and GTE, CC Docket No. 95-116, NSD Nos. L-98-29, L-98-32, L-98-31, L-98-27, filed Mar. 12, 1998. ("MCI Comments On the Petitions of US West, Pacific Bell and GTE"); Comments of MCI Telecommunications Corporation In Opposition to Petition for Extension of Time of BellSouth, CC Docket No. 95-116, NSD No. 98-27, filed Mar. 12, 1998.

<sup>13</sup> MCI Comments On the Petitions of US West, Pacific Bell and GTE at 22.

there be a one-month delay between testing completion and LNP implementation, with absolutely no justification. MCI has previously demonstrated that this interval need be, at most, approximately five days.<sup>14</sup> Thus, ELI's requested delay is excessive, and should be denied.

The Bureau must carefully scrutinize waiver requests to ensure that local number portability is implemented expeditiously. In the *Phase I Waiver Order*, the Bureau indicated that "[i]n general, we decline to second-guess carrier's assessments of their additional time requirements."<sup>15</sup> MCI encourages the Bureau, not to "second-guess" carrier's assessments, but to perform its statutorily required responsibilities to assess whether a waiver request is in the public interest. MCI believes that to do so requires that the Bureau, at least, require an explanation by petitioners justifying why the delay is needed, and how the time for that delay was determined. The delay requested must be reasonable and justified to merit extending the deadline for LNP. As discussed above, ELI's request for relief of the its Phase II implementation obligations provides no explanation as to the reasonableness of the delay proposed, and must be denied.<sup>16</sup>

ELI's request to revise the Phase III and IV implementation schedules has no support, is inconsistent, and should also be denied. ELI requests that the deadlines for *all affected carriers* for Phase III should be delayed, while those for Phase IV should be advanced. ELI provides absolutely no explanations that justify revising these deadlines. Furthermore, ELI appears to request that the Phase IV implementation deadline be advanced as a result of the Perot Systems' failure. This makes no sense. In light of the total absence of any basis for changing these deadlines, particularly in light of the logical inconsistency of the request, the Bureau should deny this request.

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<sup>14</sup> *Id.* at 8

<sup>15</sup> *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability*, CC Docket No. 95-116, NSD File Nos. L-98-20, L-98-28, L-98-27, L-98-24, L-98-21, L-98-09, L-98-29, L-98-30, L-98-26, L-98-31, L-98-22, L-98-23, L-98-32, L-98-25, Order, DA 98-614, rel. Mar. 31, 1998 ("Phase I Waiver Order").

<sup>16</sup> Perhaps, ELI can justify the requested delay, but in the absence of any explanation regarding the time intervals, and MCI's experience that the activities during these periods take considerably less time than suggested by ELI's schedule, ELI's requests appear excessive, and not in the public interest.

B. Sprint Petition

Sprint petitions the Bureau for relief of the Phase II implementation deadline for four switches. It requests relief for three switches because Southwestern Bell's failure to upgrade their switches properly would make these switches vulnerable to fraudulent third-party and collect calls if Sprint were required to comply with the Phase II implementation deadline.<sup>17</sup> MCI does not oppose these waiver requests, but reiterates that the Bureau should not extend the implementation deadlines more than is absolutely necessary. Sprint also requests a waiver of the Phase II implementation deadline for its Athens switch in the Dallas MSA.<sup>18</sup> Sprint indicates that it has scheduled a central office change-out for the exchange, which is to be completed on June 16<sup>th</sup>.<sup>19</sup> It further indicates that it could technically deploy LNP out of the existing switch on the May 15<sup>th</sup> implementation date, but that once the new switch was turned-up, the service would have to be interrupted in order to allow the company to perform testing necessary to ensure that the new switch interacts properly with the NPAC.<sup>20</sup> For this reason, it seeks a waiver of the Phase II implementation deadline until July 16<sup>th</sup>.<sup>21</sup>

This request fails to meet the Commission's standard for waiving LNP implementation deadlines. As stated above, the Commission requires that a waiver request must be based on "extraordinary circumstance beyond the control of the petitioner."<sup>22</sup> Sprint has failed to demonstrate any extraordinary circumstances beyond its control. The difficulties it confronts are a result of its own poor network planning. It has long known of the Phase II implementation deadline, and nonetheless scheduled the change-out. It should not now be relieved of its LNP obligations, merely because of its own poor planning. Furthermore, its allegation that implementing LNP on the new switch would require service interruption is unsubstantiated, and not accurate based on MCI's experience. Typically, the work involved with switch replacement is

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<sup>17</sup> Sprint Petition at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4.

<sup>22</sup> First Report and Order at ¶ 85.

no more complicated by the presence of LNP than it is by the presence of 800 call routing. In light of the fact that Sprint's alleged difficulties are the result of its own actions, and the claimed difficulties are unsubstantiated, the Bureau should deny this request.

#### CONCLUSION

For these reasons, the Commission should deny ELI's petition for waiver of the *60-day Advance Filing Requirement*, and its request to significantly delay LNP implementation. Furthermore, the Commission should deny Sprint's request with respect to its Athens exchange in the Dallas MSA. In taking these actions, the Commission must emphasize that waiver requests will be scrutinized closely, and will not be routinely granted.

Respectfully submitted,

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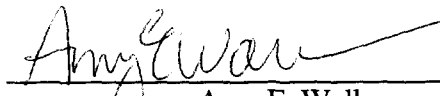
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Dated: April 20, 1998.

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I, Amy E. Wallace, do hereby certify on this 20th day of April, 1998, that I have served a copy of the foregoing document via \*messenger or first class mail to the parties below:

  
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